Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002
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Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002

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Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002

Date Introduced: 20 February 2002
House: House of Representatives
Portfolio: Transport and Regional Services
Commencement: The key operational aspects of the Act commence the day after the Act receives Royal Assent.

Purpose

To correct drafting errors in Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001*. The effect of these errors was that, from 1 October 2001, a number of the offence provisions in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* relating to oil, noxious liquid substances and garbage no longer applied in the area from the outer edge of Australia’s 12 nautical mile Territorial Sea to the limit of the 200 nautical mile Exclusive Economic Zone.

Background


Domestic implementation of MARPOL 73/78 is a cooperative matter between the Commonwealth and the States and Territories. This is reflected in the 1983 Act which generally provides that many of the Act's offence provisions only apply in the 'sea near a State [or Territory]' if the relevant State or Territory has not passed complementary MARPOL 73/78 implementation legislation. For the purpose of the 1983 Act, 'sea near a State' means the waters out to the limits of Australia's Territorial Sea, which is 12 nautical miles from coastal baselines. Until the commencement of Schedule 3 of the *International Maritime Conventions Legislation Amendment Act 2001*, the effect of these errors was that, from 1 October 2001, a number of the offence provisions in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* relating to oil, noxious liquid substances and garbage no longer applied in the area from the outer edge of Australia’s 12 nautical mile Territorial Sea to the limit of the 200 nautical mile Exclusive Economic Zone.
Maritime Conventions Legislation Amendment Act 2001 on 1 October 2001, the 1983 Act’s offence provisions applied out from the 12 nautical miles Territorial Sea to the edge of Australia’s 200 nautical mile Exclusive Economic Zone (EEZ).1

Amongst other matters, Schedule 3 of the International Maritime Conventions Legislation Amendment Act 2001 amended existing offence provisions relating to oil, noxious substances, garbage etc by creating a new offence of strict liability applying to both the master of the ship and the ship owner. Unfortunately, the amendments were incorrectly drafted so that neither the strict liability nor the fault offence2 applied to the EEZ.3 The effective result was that, any time after 1 October, a ship discharging a pollutant in the EEZ contrary to MARPOL 73/78 could not be prosecuted under Australian law.

In December 2001, waste oil was washed up on Phillip Island in Victoria. It is probable that this oil was discharged contrary to Annex I of MARPOL 73/78. Cooperative investigations by Victorian and Commonwealth agencies have yet to establish both the ship responsible for the discharge and whether it took place inside or outside of the 12 nautical mile Territorial Sea. If it was outside, no offence would have taken place because of the drafting error in Schedule 3 of the International Maritime Conventions Legislation Amendment Act 2001.

Main Provisions

Schedule 1 - Amendment of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Items 1-10 correct the drafting errors contained in Schedule 3 of the International Maritime Conventions Legislation Amendment Act 2001 by providing that both the strict liability and fault pollution offences contained in that Act apply to the EEZ. Items 1 and 2 relate to MARPOL Annexe I, Items 3 and 4 to Annexe II etc.

Concluding Comments

The Bill seeks to restore the clear policy intent of Schedule 3 of the International Maritime Conventions Legislation Amendment Act 2001. It is suggested there is no reason why at least items 1, 3, 5, 7 and 9 of the Bill (which deal with fault offences) should not be amended to make their entry into force retrospective4 to 1 October 2001. This would prevent any person responsible for reckless or negligent discharges5 within the EEZ post-1 October 2001 from escaping prosecution.

Warning:
This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.
This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.
Endnotes

1 Beyond the EEZ, the offence provisions only apply to Australian ships.
2 In general a fault offence occurs where the discharge was caused by reckless or negligent behaviour.
3 The penalties attaching to the offences are up to $55,000 (or $275,000 for a company) for a strict liability offence and $220,000 (or $1.1 million for a company) for the fault offence. There are no gaol terms.
4 The Senate Scrutiny of Bills Committee has stated it will not 'comment adversely' in relation to the retrospectivity of legislation if 'it does no more than…correct a drafting error'. For more on the issue, see Work of the Committee during the 38th Parliament, paragraph 2.5 http://www.aph.gov.au/senate/committee/scrutiny/work38/CHAPTER2.HTM
5 That is, discharges within the meaning of the 1983 Act.